

**Testimony on HB 203, Natural Resources Committee
Submitted by Vivian Drake, 7463 Cactus Flats Drive, Helena, MT 59602**

Mr. Chairman and Members of the Committee:

My name is Vivian Drake. I reside at 7463 Cactus Flats Drive, north of Helena. I hold both civil and hydrogeological engineering degrees, as well as a second master's degree in Land Resources and Environmental Sciences from Montana State University. I have worked in the field of groundwater science for over 15 years, including administering the Lewis & Clark County Water Quality Protection District for 9 of those years. For purposes of this hearing and House Bill 203, I am one of over 100 North Hills Controlled Ground Water Area Petitioners, and in fact, authored the majority of that original Petition.

On July 23, 2000, the Helena Independent Record published my "Your Turn" article with the heading "*DNRC not doing job*". The initial event that prompted the article was coming home to find not one, but two drilling rigs in my neighbors' yards. This was in addition to the knowledge that my well was fast becoming unusable as the water table had dropped below the pumping level and my family was faced with drilling a new well. Jack Stults, Water Resources Division Administrator at the time, responded in both an article and a letter to me recommending the Controlled Groundwater Area petition process as a way to address ground water problems in the North Hills. And I must admit that the petition process appeared to be working until the change in administration in 2004. The Department staff assisted me in arranging an informational meeting for the public, provided guidance as I prepared the petition, and set dates for the follow-on activities required by the statutes. Even the Department Environmental Assessment was a reasonable document that provided a great deal of information for what we, as petitioners, believed would be a fair and impartial process.

However, from the administration change and appointment of the new DNRC director in 2004, I have not seen anything that would recommend this process for any other citizen group given the way the Department is mishandling its business. And now, with this bill, the Department wants to bring this process under "rulemaking" so they have even more control in making the process NOT work. And I would point out that this is the ONLY mechanism available to citizen groups to protect ground water supplies and limit future groundwater appropriations in areas experiencing water supply and quality problems.

In my experience, despite a legislative mandate to the contrary, the DNRC operates as a totally reactive agency. It is not proactive in the protection and husbanding of water resources, but only reacts slowly and ineffectively to mitigate clear and apparent damage. Just look at the dry creek beds in the Helena area as one example. These streams used to flow all year. The DNRC has clearly overallocated surface waters in the State and now appears determined to overallocate groundwater resources as well. Rapid growth and anthropogenic stress on natural resources poses unique dangers. Often by the time damage can be detected and measured it is irreparable and progressive. The CGA process was intended to give citizens a chance to raise a red flag, point out problems, and allow the agency to take timely and prudent action to protect the resource. The DNRC has

Often by the time damage can be detected and measured it is irreparable and progressive. The CGA process was intended to give citizens a chance to raise a red flag, point out problems, and allow the agency to take timely and prudent action to protect the resource. The DNRC has perverted the process, ignored the legislative mandate, and now wants to gain absolute control by rulemaking so that they have no duty to the public and private citizens who wish to protect their drinking water resources – the same resources the Department is legislatively mandated to protect.

According to the DRNC website, the Department's Mission is *"To help ensure that Montana's land and water resources provide benefits for present and future generations."* And the mission of the Water Rights Bureau is *"To assure the orderly appropriate and beneficial use of Montana's scarce waters"*. I can assure you that DNRC is not fulfilling either of these missions. If it were, I wouldn't be standing here asking you to table this bill.

It is my understanding that Representative Jopek was trying to aide citizens in the Smith Valley near Kalispell after hearing about their horrendous experience with the CGA process. I attended the hearing as the Petitioner's expert witness and can tell you it was a "kangaroo court". The hearing process turned from what should have been a public hearing with proponents and opponents each stating their case, as happened in the North Hills hearing, to a contested case hearing where one side, the developers and realtors, had three aggressive attorneys who objected to nearly every point the petitioners tried to make and excluded evidence critical to the ultimate decision. And the hearings examiner allowed that to happen. I've appeared as an expert witness in a number of court cases and I've never seen such a travesty of justice and complete disregard for what the Montana statute specifies as a public hearing. Again, CGAs are a mechanism for citizens to bring to the attention of DNRC problems that are occurring with water availability and quality in their neighborhoods.

With HB 203, it appears the Department has inserted themselves into providing text that perverts the language of the original statute to increase their power over the CGA process and make rules that will be to the detriment of Montana citizens. I do not believe this is what Representative Jopek had in mind. I know he is serious about representing constituents and their issues. This is a case of the DNRC stepping in to do what THEY want, which is not in the best interest of citizens or the state of Montana.

There is also a financial burden to Montana citizens that has not been addressed. During the North Hills petition process, I prepared a chart showing the costs to individual citizens who had to replace their wells prior to the North Hills temporary designation as a CGA. That cost, very conservatively, was over \$210,000 for replacement of 35 documented dry wells. Since the CGA temporary designation, an additional 30 wells have gone dry, with another estimated, again conservatively, \$250,000. Conservatively, North Hills citizens have expended over three-quarter of a million dollars to replace wells, install DNRC mandated infrastructure to collect data that the Department has ignored. In addition, the Department was mandated to

oversee a study that petitioners successfully sought funding for. To say the study was flawed is an understatement and the hearing examiner, appointed at the last minute, relied almost exclusively on that flawed document to deny every allegation petitioners originally made. The department is flouting the legislative intent of the CGA statute and now wishes to substitute their own biased rule-making for the will of this legislature.

In summary, I urge you to table HB 203 now as it is written because it is counterproductive and against the interest of citizens who are trying to protect their drinking water supplies. I and other CGA petitioners would support improved language in the existing statute to require DNRC to adequately respond to problems brought to them by citizens. Language should address 1) a requirement for DNRC to perform the necessary studies to ensure decisions are made that protect citizens against loss of their groundwater quality and quantity. The DNRC has already overallocated Montana's surface water supplies and they are now intent on doing the same to Montana's groundwater. A revised statute should also require for DNRC to ensure adequate public participation through a full, fair and open public hearing process, not the pseudo-contested case process where the DNRC makes up the rules as they go along. A revised statute should also include a requirement for the state to adequately fund the necessary work to protect groundwater. Please do not allow this bill to go any further as it is written. Thank you.